IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 875 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF BHAGWANDAS F. - MUKTABEN BHAGWANDAS

Versus

DINESH GOPALDAS

Appearance:

MR DM THAKKAR for Petitioners

MR SURESH M SHAH for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act at the instance of the original defendant - tenant who was sued by the respondents - landlords for a decree of eviction on a number of grounds.

2. The plaintiffs - landlords sued the tenant for a decree of eviction on the ground that they were in arrears of rent of more than six months and were not ready and willing to pay the rent, that the landlords required the premises bonafide for their personal use and occupation, that the tenant had committed a breach of the terms and conditions of tenancy, and that the tenant had made an unlawful construction of a permanent nature without the written permission of the landlords.

3. The trial Court after appreciating the evidentiary material on record, dismissed the suit of the landlords on all the four grounds.

4. The landlords thereupon preferred an appeal to the lower appellate Court challenging the dismissal of their suit. It requires to be noted that the landlords in their appeal, did not press the ground of arrears of rent and the ground that the landlords bonafide required the premises for their personal use and occupation.

4.1 The lower appellate Court therefore was required to consider at the instance of the appellants landlords, only two aspects of the matter namely, whether the tenant had committed breach of the terms and conditions of tenancy, and whether the tenant had unlawfully constructed upon the premises a construction of a permanent nature without the written consent of the landlords.

5. The lower appellate Court, after a total re-appreciation of the evidentiary material on record, found in favour of the landlords on both the grounds, and was consequently required to allow the appeal and to pass a decree of eviction against the tenant on these two grounds.

6. Hence, the present revision at the instance of the original defendants - tenants.

7. Learned counsel for the petitioners - tenants sought to contend that the finding of fact recorded by the lower appellate court to the effect that the tenant had committed breach of one of the terms and conditions of tenancy, is a finding which cannot be sustained.

7.1 This submission itself cannot be sustained for the simple reason that the defendants - tenants in their written statement at exh.16 have more or less directly admitted that they were using one of the two rooms rented out to them as a kitchen since the commencement of the

tenancy, and have justified such user by submitting that it was necessary because there was no separate premises rented to them (or otherwise) which they could use as a kitchen. In the written statement, the defendants have further contended that since the cooking is done on a primus using kerosene as fuel, there was no damage to the property.

7.2 In this context, it is relevant to consider the language of the rent note between the parties, which is at exh.35. Para 2 of the said rent note specifically contemplates and asserts in an unambiguous terms two facts. The first fact asserted is that the tenant shall not utilize any portion of the rented premises for the purpose of cooking, and further asserts that the cooking is to be done in an adjoining house known to the parties as "Gayvada House". This clear recital in the rent note indicates that the landlord was very emphatic in preventing the tenants from using any of the two rented rooms being used as a kitchen, particularly since he had granted permission to the tenants to use as a kitchen the adjoining premises, which were in fact not rented out to the tenants. Thus, when a landlord permits the tenant to do his cooking in other premises belonging to the landlord though not rented out to the tenant, and at the same time, prohibits the tenant from using the actually rented premises as a kitchen, it only emphasizes the negative covenant imposed by the landlord upon the tenant, creating a prohibition against using either of the two rented rooms as a kitchen. Admittedly, the tenants have been using one of the rooms as a kitchen. Their contention that because they are using kerosene as fuel, no damage is caused to the property, is neither here nor there. The prohibition created by the rent note is not dependent upon the damage caused or the damage which may be caused. In fact, the prohibition has been created in order to eliminate the slightest possibility of damage. Thus, whether in fact there was damage to the property or not, is not at all relevant to the issue.

8. The next contention raised by the learned counsel for the petitioners in the context of the other ground of eviction is that the flush type latrine constructed by the tenants is not of a permanent nature. Firstly, the lower appellate Court has given ample, sufficient and cogent reasons for holding, on the particular facts of the case, that it is a permanent construction. What is not discussed by either of the two Courts, but requires to be noted is that a flush type latrine is necessarily connected to the sewage system, and the latrine is therefore permanently attached to the earth. It cannot

possibly be suggested that if this is to be removed, it will not cause any serious damage.

8.1 It is also required to be noted that it is not even the case of the tenant that he had obtained permission in writing from the landlords, which would otherwise exonerate him from the rigors of section 13[1][l] of the Rent Act.

8.2 The defence taken by the tenant in this context is that he constructed the flush type of latrine because the municipal authorities wanted to encourage the elimination of box type of latrines, and were therefore giving a subsidy for the construction of flush type of latrines. This submission only appears plausible, but does not bear scrutiny. Firstly, the municipal authority's insistence upon conversion of box type of latrines into flush type of latrines is by authority of law, and the obligation to carry out such conversion is upon the owner of the property, and not upon the tenants. Thus, the defendants - tenants were under no obligation to carry out the conversion. Secondly, even assuming that the subsidy was being granted by the municipal authorities, such a subsidy could be available to the person who satisfied the statutory obligation of the conversion of latrine. It also requires to be noted that it is not even the tenant's case nor is it established by evidence on record, that it was in fact the tenant who had availed of the subsidy being granted by the municipal authorities. Thus, even this submission requires to be rejected.

9. Learned counsel for the petitioners - tenants sought to draw my attention to the cause law on the subject. In view of the fact that the case law has been discussed by the trial Court, and appropriately dealt with by the lower appellate Court, coupled with the fact that the learned counsel has not referred to any decisions not already discussed in the two judgements in question, I do not propose to reiterate and merely narrate the various decisions in question.

10. In the premises aforesaid, there is no substance in the present revision, and the same requires to be dismissed. It is accordingly dismissed. Rule discharged with no orders as to costs. Interim relief stands vacated.

11. At this stage, learned counsel for the petitioners - tenants seeks time to vacate the premises. In view of the overall facts and circumstances of the

case, the petitioners - tenants are granted time to vacate the premises upto 05th February 2001, subject to each of the petitioners filing the usual undertaking in this Court, latest by 18th August 2000. It is clarified that there shall be no extension of time for the purpose of filing the undertaking, and if the said undertaking is not filed by due date, the decree of the lower appellate Court shall become executable forthwith, without any further orders in this regard.

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